

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of AMBER AUSTIN and DANIEL  
AUSTIN, JR., Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DANIEL AUSTIN, SR.,

Respondent-Appellant.

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UNPUBLISHED

June 7, 2007

No. 274546

Bay Circuit Court

Family Division

LC No. 05-008960-NA

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to the minor children pursuant to MCL712A.19b(3)(b)(i), (g), (j), and (k)(ii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent does not challenge the statutory grounds for termination. Rather, he contends that the termination order should be reversed because the trial court violated the provisions of MCL 712A.12 and MCR 2.004. First, he argues that his due process rights were violated because he was not properly served with notice of the permanency planning hearing. Because he did not raise this issue below, it requires reversal only if there was plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Respondent cites *In re Adair*, 191 Mich App 710, 713-714; 478 NW2d 667 (1991) and *In re Brown*, 149 Mich App 529 534-542; 386 NW2d 577 (1986) for the proposition that a failure to provide notice of a termination proceeding hearing by personal service is a jurisdictional defect that renders all proceedings in the trial court void. However, respondent's argument involves the permanency planning hearing, not the termination hearing, and he has failed to show how the alleged error affected his substantial rights. Respondent was present at numerous hearings.<sup>1</sup> At the end of the May 1, 2006 hearing, the court stated that the next hearing was the

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<sup>1</sup> Respondent was present at the preliminary hearing on August 5, 2005, the preliminary hearing  
(continued...)

permanency planning hearing, which was scheduled for July 31 at 9:00 a.m.<sup>2</sup> The lower court record also contains the proof of service indicating that respondent was served by ordinary mail at the Bay County Jail. The record clearly shows that respondent's rights to notice and an opportunity to be heard were adequately protected.

At the termination hearing, the trial court stated that the lower court record showed that respondent was personally served on September 19, 2006 with the petition for termination of parental rights and the notice of termination hearing. Respondent contends that such service was not sufficient because petitioner failed to comply with MCR 2.004(B)(3), that requires that the caption of the petition state that a telephonic hearing is required when the party is incarcerated. The trial court erred because the caption of the petition to terminate respondent's parental rights did not indicate respondent's right to a telephonic hearing, and because the trial court did not issue an order pursuant to MCR 2.004(C). However, MCR 2.613(A) provides that an error in an order or a defect in anything done or omitted by the court is not ground for vacating an order unless refusal to take action appears to the court inconsistent with substantial justice. We conclude that refusing to disturb the termination order is not inconsistent with substantial justice. Respondent's attorney stated on the record that he informed respondent that he had the right to participate in the hearing via telephone. We also conclude that respondent's participation in the hearing would not have affected the outcome of the proceedings. Respondent was convicted of third-degree criminal sexual conduct against the children's sibling and was sentenced to six to fifteen years' imprisonment. This evidence clearly supports the trial court's finding that respondent abused the sibling of the children and that the abuse involved penetration, MCL 712A.19b(3)(k)(ii). It also supports the finding that respondent did not provide proper care for his children and that he would not be able to provide such care within a reasonable time considering the children's ages, MCL 712.19b(3)(g). Therefore, the trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio

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(...continued)

on September 9, 2005, the adjudicative hearing, and the review hearing.

<sup>2</sup> Respondent was present at the May 1, 2006 hearing.